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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
AMERICA WEST BANK,**

Plaintiff

v.
**AMERICA WEST BANK MEMBERS, L.C.,
DOUGLAS M. DURBANO, DURBANO
LAW FIRM, P.C., AND DOES ONE TO
TEN, INCLUSIVE,**

Defendants

**DEFENDANTS' MOTION FOR LEAVE
TO FILE ANSWER AND
COUNTERCLAIMS OUT OF TIME**

Case No.: 1:23-cv-00087-DAO

Magistrate Judge Daphne A. Oberg

Pursuant to Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure, Defendants move for leave to file their Answer to Plaintiff's Complaint out of time. Defendants submit that the

following facts constitute excusable neglect that justify permitting filing Defendants' Answer out of time.

1. Defendants mistakenly mis-calendared the date due for their Answer to Plaintiff's Complaint.

2. On September 12, 2024, Defendants emailed Plaintiff's counsel requesting a stipulation for a 30-day extension to Answer the Plaintiff's Complaint, changing the answer's due date to October 10, 2024.

3. On the same day Plaintiff's counsel responded, they would stipulate a 16-day extension for Defendants to answer the Complaint, making the answer's due date September 27, 2024.

4. The Stipulated Motion for Extension of Time to File Defendants' Answer was filed on the same day after the parties agreed on the dates for the Stipulated Motion.

5. Defendants' office mistakenly calendared the due date for the originally requested 30-day extension of October 10, 2024.

6. On October 2, 2024, the Court noted the answer deadline had passed and ordered the parties to file a status report.

7. Defendants' Answer is being filed simultaneously with this motion, along with the ordered Status Report.

Defendants note that this Court has previously stated: "Default judgments are disfavored by the courts, particularly when they are used as penalties for filing delays or minor procedural errors." [Tracy v. Stephens, 2022 U.S. Dist. LEXIS 200346, 2022 WL 17573737](#). In its decision, the Court relied upon *Davis v. Kaiser*, 12 F. App'x 902, 904 (10th

Cir. 2001) (quoting *Ruplinger v. Rains*, 946 F.2d 731, 732 (10th Cir. 1991)) noting that default judgments are a harsh sanction and strong policies favor resolution of disputes on their merits.

Accordingly, Defendants respectfully request that the Court grant this motion and permit Defendants to file their Answer and Counterclaims out of time.

DATED: October 16, 2024

DURBANO LAW FIRM, P.C.

/s/ Richard A. Bednar

Douglas M. Durbano

Richard A. Bednar

Attorney for Defendants'

CERTIFICATE OF SERVICE

I certify that on October 16, 2024, I electronically filed the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE ANSWER AND COUNTERCLAIMS OUT OF TIME** using the Court's electronic filing system.

/s/ Rachel Perez